

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF THE DENIAL OF A
SUBSTANTIAL DEVELOPMENT PERMIT
BY PIERCE COUNTY TO JAMES D.
FLEISCHMANN

JAMES D. FLEISCHMANN,

Appellant,

v.

PIERCE COUNTY,

Respondent,

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY and SLADE
GORTON, ATTORNEY GENERAL,

Intervenors.

SHB No. 77-16

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER ROBERT E. BEATY:

This appeal is an appeal of the denial of a substantial development permit by Pierce County to James D. Fleischmann. The appeal was heard by the Shorelines Hearings Board on August 15, 1977, in Gig Harbor, Washington; members present were W. A. Gissberg, Chairman; Robert E.

1 Beaty; Robert F. Hintz and Dave J. Mooney. Robert E. Beaty presided.

2 Appellant was represented by his attorney, John B. Troup.

3 respondent County was represented by Mark L. Bubenik, Deputy Prosecuting
4 Attorney, and the Department of Ecology and Attorney General as
5 intervenors were represented by Robert V. Jensen, Assistant Attorney
6 General.

7 Having heard the testimony, having visited the site, having
8 examined the exhibits, and being fully advised, the Shorelines Hearings
9 Board makes the following

10 FINDINGS OF FACT

11 I

12 This appeal involves a dispute between a property owner and the
13 County as to the location of a bulkhead. Mr. and Mrs. James D.
14 Fleischmann are the owners of a summer home, which is on the site in
15 question, on the shoreline of Puget Sound at Wollochet Bay near Gig
16 Harbor, an area of great scenic beauty. The property has been in
17 Mrs. Fleischmann's family for many years and was first cleared for a
18 farm in 1910, and it is presently classified a Rural Residential
19 Environment under the Pierce County Shoreline Master Program. A small
20 stream flows through the property to the Sound. Large rocks were
21 apparently placed on the beach in front of the homesite as they were
22 cleared from the property about sixty years ago.

23 II

24 At this time there is no structured bulkheading on the property
25 though the rocks along the beach provide some protection to the upland
26 and now serve the purpose of protecting the upland from wave action.

27 FINAL FINDINGS OF FACT,
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1 There is a bulkhead on the adjoining property to the south which runs
2 along the toe of the bank. There is no bulkhead on the property to the
3 north. The proposed substantial development consists solely of a cement
4 seawall-type bulkhead along the appellant's bank some 60 feet in length
5 that would be constructed on the waterward side of the rocks from four
6 to nine feet beyond the line of mean high high water (MHHW) depending on
7 the configuration of the bank (appellant's Exhibit A-9). The bulkhead
8 would connect to an existing boathouse on the north of appellant's
9 property. As proposed, the project would also place approximately 50-75
10 yards of fill behind the bulkhead and channel the stream through a culvert
11 to the beach. Appellant's primary reason for building the bulkhead beyond
12 the toe of the bank is to save the cost of moving the aforementioned rocks
13 from the beach. The Fleischmanns do not intend to build any structures
14 on the fill but to use it for picnics and access to the beach although
15 such is not the purpose for the bulkhead and fill.

16 III

17 The Pierce County Shoreline Master Program pertaining to bulkheads
18 (Section 65.28.020) provides in part as follows:

19 GENERAL REGULATIONS: The following regulations apply
20 to bulkheads in all shoreline environments.

21 A. The construction of a bulkhead for the direct purpose
22 of protecting newly created residential land is prohibited.

23 B. Bulkheads shall be permitted only to protect
24 developed property from waterside erosion.

25 . . .

26 E. Bulkheads shall not intrude beyond MHHW more than is
27 necessary for installation with minimum alteration of adjacent
banks.

F. The construction of a bulkhead on shorelines where no
bulkheads are adjacent shall be within five feet from the foot

1 of any bank or landward of the MHHW mark, whichever will allow
2 for the minimum seaward projection and visual impact.

3

4 J. A person who has received approval in keeping with
5 these regulations to construct a bulkhead, shall grant adjacent
6 property owners the privilege to tie in and meet with a bulk-
7 head when they have an approved permit.

8

9 The Pierce County Master Program on landfills, as pertinent, is
10 set forth below:

11 Section 65.44.020 GENERAL REGULATIONS. The following
12 regulations apply to all landfill projects in all shoreline
13 environment:

14 A. Fills which do not extend waterward more than 5' on
15 a horizontal plane from ordinary high water may be permitted
16 upon determination by the County that no significant
17 environmental harm will result; however, fills located
18 landward of ordinary high water are preferred.

19 B. Landfills extending waterward more than five feet
20 on a horizontal plane from ordinary high water shall not be
21 permitted prior to preparation of an Environmental Impact
22 Statement and a Conditional Use permit.

23 C. Filling for the purpose of creating new land shall
24 be permitted only for ports and water dependent public and
25 private uses.

26

27 IV

28 Following application for a permit to construct the project in
29 question on January 26, 1977, Mr. Fleischmann was ultimately denied
30 a substantial development permit by the Pierce County Board of
31 Commissioners on April 18, 1977. In the County's view, he was in
32 violation of the above-cited provisions of the Pierce County Shoreline
33 Master Program.

34 FINAL FINDINGS OF FACT,
35 CONCLUSIONS OF LAW AND ORDER

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the parties and subject matter of this proceeding.

II

Appellant's proposed substantial development is inconsistent with the following portions of the master program:

Section 65.28.020.B. of the master program allows bulkheads only to protect developed property from waterside erosion. Appellant has failed to show that the proposed bulkhead in the location proposed by him is needed for protection from waterside erosion.

Section 65.28.020.E. of the master program requires bulkheads to be installed landward of the MHHW mark except as necessary for construction. Appellant proposes to build a bulkhead approximately four to nine feet beyond the MHHW mark, and has not presented persuasive reasons why construction seaward, up to nine feet, is necessary.

Section 65.28.020.F. of the master program requires bulkheads to be placed within five feet from the foot of any bank or landward of the MHHW mark, whichever is a lesser seaward projection, where there are no adjacent bulkheads. Where there are adjacent bulkheads, as is here on the southern border, appellant may construct a bulkhead extending seaward a distance equal to the adjacent bulkhead. Section 65.28.020.F., J.

FINAL FINDINGS OF FACT,
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1 Short v. Pierce County and Witterite, SHB No. 77-12. However, the
2 adjacent bulkhead in this case is located at the toe of the bank, at
3 approximately the MHHW mark. Over appellant's waterfront, the proposed
4 bulkhead would reach seaward varying from four to nine feet from the
5 MHHW mark and is therefore, inconsistent with Sections 65.28.020.E. and
6 F. of the master program.

7 III

8 We further conclude that if this bulkhead were allowed as proposed,
9 the County would have to conform to the provisions of the Pierce County
10 Master Program, 65.44.020, which require an environmental impact state-
11 ment and a conditional use permit. The County, of course, has not
12 conformed to these sections having denied the permit on the basis of the
13 applicable bulkhead regulations.

14 IV

15 Respondent Pierce County argues that Fleischmann should have
16 applied for a variance from the Shoreline Master Program. However, an
17 application for a variance is not before us. Pierce County processed
18 this matter as a development permit, and it has come to the Board as a
19 denial of a permit application. For these reasons, we do not rule on
20 the merits of this proposal under variance criteria.

21 V

22 Any Finding of Fact which should be deemed a Conclusion of Law
23 is hereby adopted as such.

24 From these Conclusions, the Shorelines Hearings Board enters this

25 ORDER

26 The action of Pierce County in denying a permit to the appellant

27 FINAL FINDINGS OF FACT,
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1 in the location sought by him is hereby affirmed.

2 DATED this 18th day of October, 1977.

3 SHORELINES HEARINGS BOARD

4 W. A. Gissberg
5 W. A. GISSBERG, Chairman

6 Robert E. Beaty
7 ROBERT E. BEATY, Member

8 Robert F. Hintz
9 ROBERT F. HINTZ, Member

10 Dave J. Mooney
11 DAVE J. MOONEY, Member
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27 FINAL FINDINGS OF FACT,
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